Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

October Term, 1995

TANISLADO MARTINEZ, II
a/k/a TINY MARTINEZ,

Petitioner,

vs.

STATE OF OKLAHOMA

Respondent.

Petition for Writ of Certiorari from the Criminal Court of Appeals for the State of Oklahoma

PETITION FOR A WRIT OF CERTIORARI

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84 pp

QUESTIONS PRESENTED FOR REVIEW

1. Certiorari should be granted to determine whether police detectives who go outside their jurisdiction to talk to a suspect while acting in their official capacity, do not contact the local law enforcement, proceed to interrogate the suspect, then take the suspect directly to their jurisdiction from the other, violate the suspect's constitutional rights and whether the actions of the police detectives were illegal?

2. Certiorari should be granted to determine whether an alleged confession which was made after the suspect indicated in writing that he wanted a lawyer but was not provided a lawyer and the confession was pressured from the suspect, should be suppressed.

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No.

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TANISLADO MARTINEZ, II
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vs.

STATE OF OKLAHOMA

Respondent.

Petition for Writ of Certiorari
From The Criminal Court of
Appeals for the State of Oklahoma

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

On October 11, 1995, the Court of Criminal Appeals for the State of Oklahoma denied rehearing of its summary opinion entered October 3, 1995, which affirmed the judgment and sentence of the Custer County District Court.

STATEMENT OF JURISDICTION

Petitioner seeks review of the opinion of the State of Oklahoma Court of Criminal Appeals filed on October 3, 1995, and the denial of a rehearing filed on October 11, 1995. That judgment affirmed the lower court's judgment and sentence. Petitioner invokes certiorari jurisdiction conferred on this Court by 28 U.S.C. § 1257(a).

STATUTES AND CASES INVOLVED

Fifth Amendment provides in part:

> ...nor shall be compelled in any criminal case to be a witness against himself,

Sixth Amendment provides in part:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and direct wherein the crime shall have been committed, which direct shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Fourteenth Amendment provides in part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

CASES NOT FOLLOWED BY THE LOWER COURT

1. *Fahy v. Connecticut*, 375 U.S. 85, 84 S.Ct. 229, 11 L.Ed.2d 171 (1963);

2. *Nordone v. United States*, 308 U.S. 338, 60 S.Ct. 338, 84 L.Ed 307 (1939);

3. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1967);

4. *Rhode Island v. Innis*, 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980);

5. *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966);

6. *Smith v. Illinois*, 469 U.S. 91, 105 S.Ct. 490, 83 L.Ed.2d 488 (1984);

7. *Geders v. United States*, 425 U.S. 80 96 S.Ct. 1330 47 L.Ed.2d 592 (1976);

8. *Ake v. Oklahoma*, 470 U.S. 68, 105 S.Ct. 1087 (1985);

STATEMENT OF CASE

On the 23rd day of January, 1992, two police officers from the City of Clinton, Clinton Police Department, without a warrant and without contacting any law

enforcement for Oklahoma County or Oklahoma City traveled to Oklahoma City to question the Defendant. Upon questioning the Defendant, the officers extracted an alleged confession from him. The question and answer session took place at the State of Oklahoma Highway Patrol, an OSBI facility, Robert Lester Training Academy in Oklahoma City, Oklahoma. After obtaining the alleged confession, the officers searched the Defendant's home in Oklahoma City and retrieve items as evidence.

On the 14th day of September, 1993, an amended information was filed in the District court of Custer county charging Martinez with assault and battery with intent to kill.

On the 29th day of September, 1993, the District court held a telephone conference with both counsels. Preliminary Hearing was scheduled and held on the 2nd day of December, 1993. Judge Duncan found sufficient evidence to bind the Defendant over for trial. The Defendant was ordered to appear the 13th day of December, 1993, for arraignment. Defendant's bond was continued at $25,000.00

On the 13th day of December, 1993, arraignment was held before Judge Goodwin. The Defendant entered a plea of not guilty.

On the 27th day of December, 1993, the Defendant filed his Demurrer to the evidence. On the same day the Defendant filed his motion to strike the testimony

of Detective Rizzi and filed a motion to suppress the alleged confession.

On the 7th day of January, 1994, the District court heard the motions of the Defendant: Motion to Suppress, overruled; Motion for General Discovery: granted; Motion to Strike testimony of Detective Rizzi: overruled; Motion for Handwriting Expert at State's Expense: denied; Amended Motion for Preliminary Hearing Transcript at State's expense: denied; Motion to Produce: granted; Motion to Produce Confidential Informant and Information Provided by Informant: denied; Application for Employment of Psychiatrist and Medical Doctor at State's expense; denied; Demurrer: overruled. Jury trial was set for the week of January 24, 1994, over the objection of defense.

On the 26th day of January, 1994, the State filed its Motion in Limine, restricting the testimony of Mary Louise Carter, Glenda Russell and Tiny Martinez. These witnesses had knowledge of assault and batteries involving State's witness, L.D. Smith, victim's husband.

On the 26th day of January, 1994, the Defendant filed his Response to the State's Trial Brief and a supplemental Motion to Suppress. On the same day the Defendant filed his Motion in Limine, restricting the witnesses, and the State, from making statements about an alleged confession. Also, on the same day, the Defendant filed motions in limine to prohibit the State's technical advisor or case officer from sitting at the

prosecution's table and testifying. Further, the Defendant requested that the State be prohibited from using a transcript of an alleged oral confession by the Defendant.

On the 28th day of February, 1994, the Defendant filed his motion for mistrial. On the same day the Defendant filed a motion to dismiss based upon improper citizen's arrest. Further, on that day, the Defendant filed his notice of intent to appeal.

On the 4th day of March, 1994, the Defendant filed a motion to reconsider the Defendant's motion to suppress and dismissal based upon an improper citizen's arrest. On the 28th day of February, 1994, the defendant was sentenced to ten (10) years.

The judgment and sentence was affirmed by the State of Oklahoma Court of Criminal Appeals on October 3, 1995, and rehearing was denied on October 11, 1995.

Petitioner now seeks the review of this Court.

REASONS FOR GRANTING THE WRIT

I.

Certiorari should be granted to determine whether police detectives who go outside their jurisdiction to talk to a suspect while acting in their official capacity, do not

contact the local law enforcement, proceed to interrogate the suspect, then take the suspect directly to their jurisdiction from the other, violate the suspect's constitutional rights and whether the actions of the police detectives were illegal?

Petitioner has included in the Appendix a portion of the testimony of Detective Rizzi for reference to support this issue. When these testimonies are considered with the subsequent case law, it is clear that the order from the Court of Criminal Appeals for the State of Oklahoma is in conflict with FIFTH and FOURTEENTH AMENDMENTS case law of the Court and other State Courts of last resort.

22 O.S. § 202 reads as follows:

> A private person may arrest another:
>
> 1. For a public offense committed or attempted in his presence.
>
> 2. When the person arrested has committed a felony although not in his presence.
>
> 3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

22 O.S. § 205 reads as follows:

> A private person who has arrested another for the commission of a public offense, must, without unnecessary delay, take him before a magistrate or deliver him to a peace officer.

In the case at bar, the lower court ruled that the Defendant's arrest was proper as a citizen's arrest. (Tr. Vol. II p. 374, 1.23-25, p. 375, 1.1-2) A ruling by the lower court occurred after an in camera hearing.

In *Nickell v. State*, 746 P.2d 1155 (Okl. Cr. 1987), the defendant was stopped and arrested by a Blackwell Police Officer, outside his jurisdiction. The officer was still in Kay County when he made the arrest. Immediately after the arrest, the defendant was turned over to a Kay County Deputy Sheriff. The sequence of arrest was within the language of 22 O.S. § 202 and § 205.

However, in the case at bar the Defendant was interrogated and then arrested in Oklahoma City, Oklahoma County. The arrest took place outside of the Clinton Police Department's jurisdiction and outside of Custer County. The officers did not contact the Oklahoma City or Oklahoma County law enforcement authorities, nor did they have a warrant for his arrest. (Tr. Vol. II p. 366, 1.24-25, p. 377, 1.1-2)

During the trial, Detective Rizzi stated that he and Detective Davenport went to Oklahoma City in their official

capacity. (Tr Vol II p. 352, 1.6-11) After they arrested the Defendant, the officers with the Defendant drove directly to Clinton, Oklahoma. The Defendant was not turned over to the Oklahoma City Police or the Oklahoma County Sheriff. (Tr. Vol. II p. 346, 1.5-15)

In *Phipps v. State*, 841 P.2d 591 (Okl. Cr. 1992), this court held:

> Generally, a police officer's authority cannot extend beyond his jurisdiction. Meadows v. State, 655 P.2d 556, 557 (Okl. Cr. 1983). There are of course, exceptions for (1) hot pursuit and (2) when one municipality has requested the assistance of another municipality's officers pursuant to Title II, Section 34-103. However, neither of these exceptions is applicable in the present case.

Id. at 593. The Clinton Police Officers, in the case at bar, went to Oklahoma City in their official capacity. They did not exit their jurisdiction as private citizens, nor did they arrest the Defendant by acting in the capacity of a private citizen. (Tr. Vol. p. 352, 1.6-11)

Further, the officers identified themselves as police officers, later read Miranda Warning and took the Defendant to a state police facility to conduct their questioning of the Defendant. Thus, the

officers were acting in their official capacity and were outside of their jurisdiction.

Also, in *Tomlin v. State*, 65 Okla. Bar Jrnl. 812 (1994), this Court held:

> In Oklahoma, a peace officer's right to arrest without a warrant is limited not only by federal and state constitutions, but by state statute as well. See *Jones v. State*, 202 P.2d 228, 230 (Okl. Cr. 1949); 22 O.S. 1987, § 196. A private citizens right to make an arrest is even more limited. See 22 O.S. 1981, § 202-03.

Id. at 813. In *Tomlin* the Court further stated that:

> An illegal arrest renders inadmissible any evidence pursuant to the arrest. See *Hunt v. State*, 601 P.2d 464, 466 (Okl. Cr. 1979) cert den'd 446 U.S. 969, 100 S.Ct. 2951 (1980). This so-called "exclusionary rule", prohibiting illegally-obtained evidence from being used against an accused, is not just a rule of evidence or procedure in Oklahoma. It is a matter of State Constitutional magnitude, and has been for over seventy years. See *Okla. Const. Art. II*, § 30; *Turner v. City of Lawton*, 733 P.2d 375, 377-78

(Okla. 1986),cert denied, 483 U.S. 1007, 107 S. Ct. 3223 (1987); *Michael v. State*; 505 P.2d 1399, 1402-03 (Okl. Cr. 1973); *Gore v. State*, 218 P.543, 549 (Okl. Cr. 1923); *Hess v. State*, 202 P. 310, 314-16 (Okl. Cr. 1921).

Id. at 816.

The rulings of the *Tomlin* and *Phipps* Court, clearly hold that once a police officer identifies himself as such, he is acting under the "color of law", and thus cannot make a citizen's arrest. Also, any evidence obtained against the accused under such an arrest must be suppressed.

In *Bynum v. State*, 490 P.2d 531, (Okla. 1971), the Court stated that "the fruits of an illegal arrest may not be admitted into evidence and form the evidence upon which a conviction is based." Id at 534. See also *Fahy v. Connecticut*, 375 U.S. 85, 84 S.Ct. 229, 11 L.Ed 2d 171 (1963); *Nordone v. United States*, 308 U.S. 338, 60 S.Ct. 338, 84 L.Ed 307 (1939); *Collins v. Beto*, 348 F.2d 823 (5th Cir. 1965); *Gatlin v. United States*, 326 F.2d 666 (D.C. Cir. 1963); *Killough v. United States*, 315 F.2d 241 (D.C. Cir. 1962).

The Defendant contends that he was put under arrest and taken to the Robert Lester Training Center, in Oklahoma City, Oklahoma. There he was questioned by officers of the Clinton Police Department. These officers were outside of their jurisdiction. See 22 O.S. § 186

and § 190; *Hill v. State*, 500 P.2d 1080 (Okl. Cr. 1972); *Nickell v. State*, 746 P.2d 455 (Okl. Cr. 1987). The arrest and questioning was performed without the aid of the Oklahoma County Sheriff, the Oklahoma City Police Department or the various state police agencies which had proper jurisdiction. *See Nickell* at 1157, 1158; also see 19 O.S. § 516

In *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed 2d 889 (1967) the United States Supreme Court said, "[o]nly when the officer, by means of physical force or show of authority has in some ways restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." Id. at 19, n. 16 (Emphasis added). "In order to constitute an arrest, there must be some actual restraint of the individual's freedom of movement, or attempt to take person into custody." *Ross v. State*, 829 P.2d 58, 63 (Okl. Cr. 1992). Thus once the Defendant was taken at his home in Oklahoma City by the Clinton police officers and taken to a police facility, his freedom of movement was "prohibited" under their official capacity (show of authority).

Further, when the Defendant's liberty was restrained, his freedom of movement was "seized". *See Terry* at 16. Therefore, any evidence which was obtained is the poisonous fruit of an illegal arrest.

The evidence obtained by officers Rizzi and Davenport is the fruits of an illegal arrest, under the holding of *Bynum*, supra. The evidence cannot be

used in any way to convict the Defendant.

II.

Certiorari should be granted to determine whether an alleged confession which was made after the suspect indicated in writing that he wanted a lawyer but was not provided a lawyer and the confession was pressured from the suspect, should be suppressed.

Petitioner has included in the Appendix a portion of the testimony of Detective Rizzi for reference to support this issue. When these testimonies are considered with the subsequent case law, it is clear that the order from the Court of Criminal Appeals for the State of Oklahoma is in conflict with FIFTH and FOURTEENTH AMENDMENTS case law of the Court and other State Courts of last resort.

In *Booker v. State*, 851 P.2d 544 (Okl. Cr. 1993), this Court said, while quoting from *Rhode Island v. Innis*, 446 U.S. 291, 100 S.Ct. 1682, 1689, 64 L.Ed.2d 297 (1980):

> The term "interrogation" under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the

suspect.

Id. at 547. *See White v. State*, 674 P.2d 31, 36 (Okl. Cr. 1983).

During trial, Detective Rizzi testified about the alleged confession given by the Defendant.

> I read that out loud to him, "Do you wish to talk to me, circle yes or no." And he circled no initially. I said, "No, you don't want to talk to me?" and he said, "Well, this means I'm under arrest right?" I said, "No, it doesn't mean that you're under arrest. I'm sorry if I gave you that impression."

(Tr. Vol. II p. 321, l. 19-25). Clearly this is a direct violation of the Supreme Court's ruling in *Innis*, supra.

In *Long v. State*, 65 Okl. Bar Jrnl. 3072 (1994), the defendant stated he did not want to answer a question. At that point all questioning stopped. It was not until the defendant initiated conversation that the questioning continued. Id. at 3073. Had this occurred in the case at bar, then the confession would have been legally obtained. But that is not the case. It was Rizzi who continued the conversation, "no, you don't want to talk to me?" (Tr. Vol. II p. 381, 1.3-12) This is a clear violation of the Defendant's Miranda rights. *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 1627-28, 16 L.Ed.2d 694 (1966).

Further, In *Smith v. Illinois*, 469 U.S. 91, 105 S.Ct. 490, 83 L.Ed.2d 488 (1984), the Court said "an accused's post request responses to further interrogation may not be used to cast retrospective doubt on the clarity of the initial request itself." Id, at 100. *See also Booker* at 587. Therefore, when the Defendant indicated that he did not want to talk to the police officers, any further attempt to question him was improper.

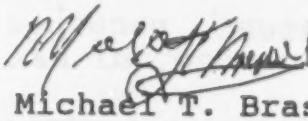
Thus, under the holdings of the lower Court in *Booker*, supra, *Long*, supra, and the holdings of the United States Supreme Court in *Innis*, supra, and *Smith* supra, the confession should never have been allowed into evidence. To allow the confession to be presented as evidence to the jury, the trial court erred.

This error is harmful. The record will indicate there is no other evidence which could possibly have supported a conviction of the Defendant. Had there been other evidence such as positive DNA tests, hair samples of the Defendant under the victim's finger nails, or finger prints at the scene of the crime, which would indicate him as the perpetrator, then there is room for the "harmless error" argument. However, no such evidence exists against the Defendant. There is only his alleged confession which points to him as the perpetrator of the crime. This error requires reversal of the conviction and a dismissal of the charge against the defendant.

CONCLUSION

Petitioner has shown that the order of the Court of Criminal Appeals for the State of Oklahoma affirmed the rulings of the Custer County District Court. These rulings are in direct conflict with the Courts of last resort of other States, and this Court as to the several constitutional questions. For the above stated reasons this Honorable Court should resolve this conflict and protect this Petitioner's constitutional rights.

Respectfully submitted,



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Appendix A
Filed Sept. 12, 1995

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

TANISLADO (AKA TINY) MARTINEZ,	)	
Appellant,	)	
vs.	)	No. F-94-265
STATE OF OKLAHOMA,	)	
Appellee.	)	

S U M M A R Y O P I N I O N

STRUBHAR, JUDGE:

Appellant, Tanislado Martinez, was convicted of Assault and Battery with a Dangerous Weapon, in the District court of Custer County, Case Number CRF-93-2, following a jury trial before the Honorable Charles L. Goodwin. Following its return of a guilty verdict, the jury recommended that Appellant be sentenced to serve a term not to exceed ten years. The trial court sentenced Appellant to ten years incarceration.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we affirm. In reaching our decision, we considered the following propositions of

error and determined neither reversal or modification to be required under the law and the evidence:

I. The citizen's arrest of the defendant was improper/illegal and the evidence obtained therefrom should have been suppressed.

II. The alleged confession of the defendant should have been suppressed.

III. The testimony of Officer Rizzi should not have been allowed.

IV. The sentence imposed by the jury was improper.

V. The defendant's request for mistrial should have been sustained, the sentence imposed by the jury was not fixed and certain.

VI. The defense should have been permitted to present testimony that the victim's husband had committed violent acts upon others similar to the violent acts perpetrated upon the victim.

VII. Defendant should be given latitude in discovery in order to protect his constitutional rights to a fair trial.

VIII. The defendant should have been provided transcripts at State expense.

A. The defendant should have re- ceived assistance at

the State's expense to hire a psychiatrist and other expert witnesses.

DECISION

The Judgment and Sentence of the trial court is AFFIRMED.

APPEARANCES AT TRIAL	APPEARANCES ON APPEAL
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DENNIS SMITH ASSISTANT DISTRICT ATTY CUSTER COUNTY COURT- HOUSE ARAPAHO, OK 73620 ATTORNEY FOR THE STATE	W.A. DREW EDMONDSON ATTY. GENERAL OF OKLA. PATRICK T. CRAWLEY ASST. ATTY. GENERAL 112 STATE CAPITOL BLDG. OKLA. CITY, OK 73105 ATTORNEYS FOR APPELLEE

OPINION BY: STRUBHAR, J.
JOHNSON, P.J.: concur
CHAPEL, V.P.J.: concur
LUMPKINS, J.: concur
LANE, J.: concur

Appendix B
Filed October 11, 1995

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

TANISLADO (AKA TINY) MARTINEZ,	)	
Petitioner,	)	
vs.	)	No. F-94-265
STATE OF OKLAHOMA,	)	
Respondent.	)	

ORDER DENYING REHEARING

Petitioner filed a Petition for Rehearing in the above styled case after his conviction was affirmed by this Court on September 12,1995. A petition for rehearing may only be filed if 1) some question decisive of the case and duly submitted by the attorney of record has been overlooked by the Court, or 2) the decision is in conflict with an express statute or controlling decision to which the attention of this Court was not called either in the brief or in oral argument. Rule 3.14(B), Rules of the Court of Criminal Appeals, 22 O.S.Supp. 1994, Ch. 18, App. As the complaints raised in Petitioner's Petition for Rehearing do not fall within the above criteria, rehearing is not warranted in this case.

IT IS THEREFORE THE ORDER OF THIS COURT that this Petition for Rehearing is DENIED.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 11th day of October, 1995.

/s/
CHARLES A. JOHNSON, PRESIDING JUDGE

/s/
CHARLES S. CHAPEL, VICE PRESIDING JUDGE

/s/
GARY L. LUMPKIN, JUDGE

/s/
JAMES F. LANE, JUDGE

/s/
RETA M. STRUBHAR, JUDGE

ATTEST:

/s/
CLERK

APPENDIX C
FILED OCT. 3, 1995

IN THE COURT OF CRIMINAL APPEALS FOR
THE STATE OF OKLAHOMA

TANISLADO (AKA TINY) MARTINEZ,	)	
Appellant,	)	
vs.	)	No. F-94-265
STATE OF OKLAHOMA,	)	
Appellee.	)	

PETITION FOR REHEARING

Comes now the Appellant, Tanislado Martinez, by and through his attorney of record, Braswell & Associates, Inc., P.C., Michael T. Braswell, and hereby submits his Petition for Rehearing pursuant to the Rules of the Oklahoma Court of Criminal Appeals Rule 3.14.

The ruling of this Court is contrary to *Phipps v. State*, 841 P.2d 591 (Okl. Cr. 1992). In *Phipps* a police officer outside of his jurisdiction identified himself as a police officer and made an arrest, as in the case at bar. The Defendant was then transported by officers who were also outside their jurisdiction back to their jurisdiction,

as in the case at bar. This Court held that "the arrest itself was illegal since Officer Kinney did not follow the dictates of Title 22, § 205..." Id. at 594. It is clear that this Court has over looked the effect of *Phipps* on police officers making arrests, under the color of law, outside their jurisdiction.

WHEREFORE, premises considered, the Appellant prays that this Honorable Court grant him a rehearing and permit counsel to present oral argument before the Court.

BRASWELL & ASSOCIATES, INC.
For the Firm

/s/
MICHAEL T. BRASWELL, OBA #1082
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(405) 232-1950

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document was mailed this 3rd day of October, 1995 to:

Patrick T. Crawley
Asst. Attorney General of Oklahoma
112 State Capital Bldg.
Oklahoma City, OK 73105

/s/
Michael T. Braswell

Appendix D
Issued March 3, 1994

THE DISTRICT COURT OF CUSTER COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,
Plaintiff,
vs. Case No CF-93-2

TANISLADO MARTINEZ
II a/k/a TINY
MARTINEZ,
DOB: 07/13/70
SSAN: 443-74-8434
Defendant.

JUDGMENT AND SENTENCE
(JURY)

Now on Monday, February 28, 1994, the same being the time duly appointed for Judgment in this case, and the defendant being personally present in open Court with his attorney Michael Braswell, and the defendant, having heretofore been duly arraigned thereon and having been duly and legally tried by a jury in Custer County and found guilty of the offense as ASSAULT AND BATTERY WITH A

DANGEROUS WEAPON, and the jury having assessed the defendant's punishment at a term of TEN (10) YEARS and a presentence investigation and report having been considered and filed in writing and filed; and the defendant, after being requested, stated no sufficient legal cause why judgment and sentence should not be pronounced against the defendant, and none appearing to the Court, it is the judgment of the court that said defendant is guilty of the same crime.

IT IS THEREFORE THE JUDGMENT OF THE COURT that the said defendant be committed to the custody of the Department of corrections of the State of Oklahoma, and the Defendant is SENTENCED to serve a term of imprisonment of TEN (10) YEARS for such crime, the term of sentence to begin at and from the delivery by the SENTENCED to serve a term

of imprisonment of TEN (10) YEARS for such crime, the term of sentence to begin at and from the delivery by the Sheriff of the defendant to the receiving center at Lexington, Oklahoma;; and the defendant pay the costs of this action taxed at $1,228.58 plus $500.00 victim-witness assessment, for which judgment is hereby entered against the defendant; and thereupon the defendant was notified by the Court of his right and necessary procedure to appeal by certiorari from this Judgment and Sentence to the Court of Criminal Appeals of the State of Oklahoma, and if indigent to have counsel appointed and if needed a transcript furnished without cost.

The Sheriff is Ordered to transport the defendant to said Assessment and Reception Center, at Lexington, Oklahoma, after expiration of a ten (10) day period

to determine if the defendant wants to file Motion to Vacate Judgment and Sentence and to ask for Court appointed counsel on appeal. The Sheriff is further ordered to deliver the defendant to said Assessment and Reception Center with a certified copy of this Judgment and Sentence which is the authority for the imprisonment of the defendant by the Department of Corrections of the State of Oklahoma, and that the Warden of the penitentiary detain the defendant according to this Judgment and Sentence, and that the Clerk of this Court immediately certify under the seal of the Court, and deliver to the Sheriff of Custer County, Oklahoma, two (2) copies of this Judgment and Sentence, one of the (2) copies accompany the body of the defendant to the Lexington Assessment and Reception Center, Lexington, Oklahoma,

and to be left therewith at the penitentiary as the warrant and authority for the imprisonment of the defendant as hereinbefore provided and the last named copy to be returned to the Clerk of the Court with the proceedings thereunder endorsed thereon.

/s/

Judge of the District Court

APPENDIX E
FILED MARCH 4, 1994

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

THE STATE OF OKLAHOMA, Plaintiff,	
vs.	Case No. CRF-93-2
TANISLADO MARTINEZ, II, Defendant.	

MOTION TO RECONSIDER DEFENDANT'S MOTION TO SUPPRESS AND DISMISS BASED UPON IMPROPER CITIZEN'S ARREST

Comes now the Defendant by and through his attorney and respectfully requests this Court to reconsider its ruling that the arrest and taking of the alleged confession of the Defendant was proper as a citizen's arrest. This Court stated that it had later case law than that provided by the Defendant. Subsequent to the hearing on February 28, 1994, Counsel obtained later case law which was in the February 26, 1994 issue of the Oklahoma Bar Journal. The two cases are attached for the Court's reference and they are as follows:

a. Tomlin v. State, Okla. Bar Journal, Vol. 65 No. 9, 2/26/94, p. 812.

b. Phipps v. State, Okla. Bar Journal, Vol. 65 No. 9, 2/26/94, p. 820.

All previously rules case law on all issues are incorporated by reference.

WHEREFORE, premises considered, the Defendant prays that this Court reconsider its rules on the authority of the Clinton Police to act in an official capacity in Oklahoma County and citizen's arrest issues, and upon doing so suppress the alleged confession and dismiss the case pursuant to the latest case law from the Oklahoma County of Criminal Appeals.

BRASWELL & ADJEI
For The Firm

MICHAEL T. BRASWELL, OBA #1082
3621 North Kelley, Suite 100
Oklahoma City, OK 73111
(405) 232-1950
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of March, 1994, a true and correct copy of the MOTION TO RECONSIDER DEFENDANT'S MOTION TO SUPPRESS AND DISMISS BASED UPON IMPROPER CITIZEN'S ARREST was HAND-DELIVERED to:

Dennis Smith
Asst. District Attorney

/s/
Michael T. Braswell

APPENDIX F
FILED DEC. 27, 1993

IN THE DISTRICT COURT OF CUSTER COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,	
Plaintiff,	
vs.	Case No. CRF-93-2
TANISLADO MARTINEZ, a/k/a TINY MARTINEZ,	
Defendant.	

DEMURRER

Comes now the defendant by and through his attorney of record and demurrers to the evidence presented by the State at the preliminary hearing in that such does not support the alleged crime for which he is charged.

Wherefore, premises considered, the defendant requests that this court sustain his demurrer.

/s/

Michael T. Braswell,
OBA# 1082
3621 N. Kelley, Suite 100
Oklahoma City, OK 73111
(405) 232-1950
Attorney for Defendant

CERTIFICATE OF SERVICE

This is to certify that on this 23rd day of December, 1993, a true and correct copy of the foregoing document was mailed prepaid to:

Dennis A. Smith
Assistant District Attorney
Custer County Courthouse
P.O. Box 36
Arapaho, OK 73620

/s/
Michael T. Braswell

APPENDIX G
FILED DEC. 17, 1993

IN THE DISTRICT COURT OF CUSTER COUNTY

STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CRF-93-2
	)	
TANISLADO MARTINEZ, a/k/a TINY MARTINEZ,	)	
	)	
Defendant.	)	

MOTION TO SUPPRESS ALLEGED CONFESSION AND BRIEF IN SUPPORT THEREOF

Comes now the defendant by and through his attorney of record and moves this court to SUPPRESS the alleged confession in that the alleged confession was obtained improperly defendant did not voluntarily give any statement and he was fearful of being abused and the alleged confession was not in the handwriting of the defendant, and he was denied counsel.

It is the burden of the State to prove that the confession was voluntary, etc., see State v. Harp, 457 P.2D 800. In this case before the bar the defendant indicated that he wanted an attorney, then allegedly changed his mind, see Exhibit "A", and when the voluntary

statement given on January 20, 1992, see Exhibit "B", is compared with the alleged confession on January 28, 1992, see Exhibit "C", it is apparent that the material parts of the body of the alleged confession are in the handwriting of another person. Also, the testimony of Detective Rizzi illustrated that the conditions under which the alleged confession was of such that the defendant was under arrest and the voluntariness is of extreme doubt to the point that it was forced and counsel was denied to the defendant.

See also, Booker v. State, 851 P.2d 544 (1993); and Reeves v State, 601 P.2d 113 (1979),

Wherefore, premises considered, the defendant moves this court to suppress the alleged confession, and any evidence obtained immediately after the alleged confession more specifically the boots obtained.

/s/

Michael T. Braswell,
OBA# 1082
3621 N. Kelley, Suite 100
Oklahoma City, OK 73111
(405) 232-1950
Attorney for Defendant

CERTIFICATE OF SERVICE

This is to certify that on this 23rd day of December, 1993, a true and correct copy of the foregoing document was mailed prepaid to:

Dennis A. Smith
Assistant District Attorney
Custer County Courthouse
P.O. Box 36
Arapaho, OK 73620

/s/
Michael T. Braswell

APPENDIX H
FILED JUNE 9, 1994

IN THE DISTRICT COURT OF CUSTER COUNTY

STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CRF-93-2
	)	
TANISLADO MARTINEZ, a/k/a TINY MARTINEZ,	)	
	)	
Defendant.	)	

VOLUME II

TRANSCRIPT OF JURY TRIAL
HAD ON THE 26TH - 28TH DAY OF JANUARY, 1994
BEFORE THE HONORABLE
CHARLES L. GOODWIN, DISTRICT JUDGE

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DIRECT EXAMINATION
BY MR. SMITH:

Q. (By Mr. Smith) Detective Rizzi --

THE COURT: No, let's do it back the other way. If you'll stay at the podium we might have

questions loud enough that we can all hear that way.
MR. SMITH: Okay, Judge.
Q. (By Mr. Smith) Detective Rizzi, I believe you testified that you went to the Robert Lester Training Center in Oklahoma City, is that correct, with the defendant?
A That's correct.
Q And he was not under arrest, is that right?
A That's right.
Q Okay. Were you in uniform at that time?
A No, sir.
Q What type of clothes were you and Detective Davenport wearing?
A We were wearing plain clothes. We were both wearing suits.
Now, he knew you as a police officer, is that correct?
A Yes, sir.
Q Mainly because of your prior interview, is that right?

A Yes
Q Okay. When you arrived at the Robert Lester Training Center -- first would you tell the Court what type of office that you were in?
A It was Second Lieutenant Goodson's office. He's an

OHP Lieutenant. It had chairs and a desk and bookshelves, just a one-man office.
Q When you arrived at that office what did you do?
A We went into the room and sat down. I read -- well I prepared at the top I wrote the date and time and where we were at on the top of the standard Miranda form that is used by our department.
Q Okay. what did you do next?
A I read that form to the defendant. I asked him if he understood it. He said that he did. I asked him to sign it. He did. He signed it and then at the bottom there's a place where it says do you wish to talk to me. And then there's a yes or a no.
I read that out loud to him, "Do you wish to talk to me, circle yes or no." And he circled no initially. I said, "No, you don't want to talk to me?" And he said, "Well, this means I'm under arrest, right?" I said, "No, it doesn't mean that you're under arrest. I'm sorry if I gave you that impression."
I asked him if he thought he was under arrest and

he said, "Well, no, I didn't." I

said, "Do you want to answer questions about this?" And he said, "Yes," that he did. So I went over the contents of the form.

I didn't re-read the form but I told him that he didn't have to talk to us. And reminded him that he didn't have to talk to us, that he could stop at any time. I even told him if he didn't want to talk to us I'd take him back to his house. And he said, yeah that he would talk to us.

So I asked him to circle yes and put his initials by that circle so that there would be no question later that he really did want to talk to us.

Q Mr. Rizzi, I'll hand you what's been marked for purposes identification as State's Exhibit No. 5 and ask if you can identify that to the Judge, please?

A This is the Miranda Warning, the form that I read to the defendant.

Q The handwriting at the top of the page, is that your handwriting?

A It is.

Q And the signature -- whose signatures are on that document?

A The defendant's signature, and then it's witnessed

by myself and Michael Davenport.
Q Did you see the defendant sign that particular

forms?
A I did.
Q And was -- were you present when Sergeant Davenport
signed it?
A I was.
Q And your signature is on it?
A It is.
Q Now, referring back to your testimony about -- I do
notice that the no is circled and crossed out and the
yes and there's what appears to be initial under that.
Is that what you're referring to in your testimony?
A It is.
Q Okay.

MR. SMITH: The State moves to introduce
State's 5, your Honor.
THE COURT: Any objection, counsel?
MR. BRASWELL, Yes, your Honor, We object to
the voluntariness of those marks on that document.
THE COURT: Well, that objection will be
overruled.
Q (By Mr. Smith) Detective Rizzi, at any time up to
this point had the defendant

requested an attorney?
A No, sir.
Q Up to this point was the defendant under arrest?
A No. sir.

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THE COURT: Counsel, I guess I need to clarify that record. I'm going to admit Exhibit 5 at this time.
MR. SMITH: Okay. Your Honor do --
THE COURT: Go ahead.
MR. SMITH: Do we go into the confession at this time? Is that what the Court requests?
THE COURT: No. I think you need to give me some more circumstances, counsel.
Q (By Mr. Smith) Okay. At this time, after he signed a form and signed or circled the yes, what did you go into during your interview?
A I asked -- we reviewed his statement that he gave me that Monday on the 20th and then I asked him about what had happened on that night at the Blue Pig.
Q What specifically did you -- did you threaten him in any way?
A No, sir.
Q Did you -- again did you -- was he handcuffed in any way?

A No, sir.
Q How were you sitting in this particular office?
A There were two chairs along one wall and they were against the wall. Sergeant Davenport was seated in one of the chairs to the defendant's right. I was seated in a chair directly in front of him.

Q Okay. Did you all have any guns or anything out in plain sight?
A No, sir.
Q Did you have any other type -- potential weapons that you were holding or within reach or anything?
A No, sir.
Q When you started to talk to him about what -- about his statement on Monday night, did you say anything in reference -- in regards to the crime after you started the review with him?
A Yeah, we talked about the crime.
Q Okay. and when you were talking about the crime did you talk about the victim in the case?
A I did.
Q Okay. And was there any reaction from the defendant when that occurred?
A No.
Q Okay. What did you ask him after your preliminary

remarks? What did you ask him?
A I asked him if he had gone -- well, first I told him that on the first interview it appeared that he wanted to tell me something and was unable to do so. And I was referring to his eyes tearing up.
At that point his eyes teared up again and he shook his head no. And I said I know that you're carrying a

big burden and I want you to tell me about it. And he didn't say anything.
And so I asked him if he went into that -- if he planned to go into the Blue Pig that night to beat her? And he said, "No." I asked him if he went into the bar that night and made a mistake and he said he had.
Q Okay. What did he tell you next?
A He told me that he had been drinking real heavy before he went to the Blue Pig that night, told me that he drank about a case of beer at his dad's house which he explained was 24 cans. He went to the bar about midnight and had some mixed drinks and some beer and played some pool.
He said that during the time he

was there he was having blackouts where he couldn't remember certain things, just alcohol blackouts. He said that there was a female bartender that waited on him, but he didn't know her name.

He told me that he drank the mixed drinks and played pool, and he also said that she was coming on to him throughout the night. He said he remembered her hugging him and stuff like that. And then he said that he remembered that he was at -- he was -- wanted to stay and rink and it was closing time.

And the bartender came up and told him he was going

to have to go, and he wanted to stay and drink. He said that she put her hands on him and pushed him and said you're going to have to do. And he at that time punched her in the face with his fist.

I asked him if she went down after the first time that he hit her and he said he thought she did. And then he told me that he hit her about two or three times. So I asked him if he thought the second two or three times -- the second two times

then would have been while she was on the ground? He said that he though that was right.

Then he told me that the next thing he remembered was walked out the door. He evidently had a blackout from that point to when he walked out the door. I asked him when he walked out the door if he heard her crying or heard her screaming or anything to that nature? He said he didn't remember.

He told me he got in his car and drove home because he was afraid he was going to pass out.

Q Did he tell you what type of clothing he was wearing?

A He did.

Q And what was that?

A He told me he was wearing a sleeveless T-shirt, blue jeans, and his National Guard boots.

Q Now, while you were talking to him about the actual assault did you use any type of prop or anything like that to assist you in your questioning?

A I did.

Q And what did that consist of?

A A very rough diagram that I drew

of the inside of
the Blue Pig.
THE COURT: Counsel, let me see so I can --
MR. SMITH: I'm sorry.
Q (By Mr. Smith) Detective Rizzi, I'll hand you
what's been marked for purposes of identification as
State's Exhibit No. 6 and ask you if you can identify
that to the Court, please?
A This is the rough sketch that I did during the
interview with the defendant.
Q Did you draw that out while the defendant was
sitting there with you?
A I did.
Q And what was the purpose of you drawing that sketch
out?
A He told me that when he first hit her it was
between the bar and the pool table. And I wanted to see
just exactly where it first started in relation to where
she was found at five o'clock the next morning.
Q Okay. And you used State's Exhibit 6 for that

purpose, is that correct?
A Is that Sergeant Davenport's --
Q I'm sorry. What is this?
A This one was --
Q Didn't you use State's Exhibit 6

for that purpose
with him at that time?
A I did.
Q Did you place any marks or anything on there at his direction?
A I did.
Q And what mark was that?
A There's a dot between the bar and the pool table.
I made a mark. I asked him to show me where it started.
He pointed to that spot and I put a dot there.
Q Okay. You put it there, but it was at his direction, is that correct?
A That's correct.
Q Is that based on what knowledge you had of the crime scene and which report you had seen? Was that the -- approximately the same area the victim was found in this case?
A It was.
MR. SMITH: I move to introduce State's Exhibit No. 6, your Honor.
MR. BRASWELL: We object, your Honor.

THE COURT: What grounds, counsel?
MR. BRASWELL: On the grounds of the voluntariness and the identification that's not to scale, also.

THE COURT: The objection will be overruled.
Q (By Mr. Smith) Now, Did Mr. Martinez provide you with any type of written document?
A He did.
Q And what type of document was that?
A A written statement.
Q How did you arrive at the decision that he would give you a written statement?
A I asked him how he wanted to record his statement, either write it or audio tape, or video type.
Q And what was his response to those options?
A that he wanted -- first he wanted to do the written, but he absolutely refused to do video tape.
Q Okay. So you made a video tape offer to him, is that right?
A Yes, sir.
Q Okay. And he refused to do that?
A He did.
Q And was a video tape made of his confession?
A No, sir.
Q Now, you say that he wanted to do the writing, is

that correct?
A That's correct.
Q And did you provide a document for him to write on?

A I did.
Q And what type of document was that?
A It's a statement form.
Q And did you put any writing on that particular form?
A I did.
Q And what did that consist of?
A I filled out the tope portion of the form. It has his name, address, date of birth, phone number, simple identifiers.
Q Did Mr. Martinez then make out a written statement using that same form?
A He did.
Q And did he sign that form?
A He did.
(State's Exhibit No. 7 marked.)
Q Mr. Rizzi, I'll show you what's been marked for purposes of identification as State's Exhibit No. 7 and ask if you have seen that exhibit before?
A I have.
Q Would you tell the court what that exhibit is?
A This is the written statement given to me by the

defendant following his interview.
Q Now, Detective Rizzi, at the top of that form there's some information about name, date of birth,

phone number, address. Was that the information that you filled in yourself?
A It is.
Q Okay. Was Mr. Martinez present when you filled that information in?
A Yes, sir, he was.
Q Did he acknowledge your-- or did you ask him if that was the right information or if it was the wrong information, or did he make any acknowledgement of that?
A I asked him the information that was relevant to him. Obviously I knew the time and date, but I asked him what his date of birth and phone number, and I may have even asked him -- I don't remember specifically asking him his address, but I may have.
Q Okay. So the information you filled in relevant to him, he gave to you at that time, is that right?
A That's correct.
Q Okay. And now the writing underneath the information, whose handwriting is that in?
A That's in the defendant's.
Q And he wrote that himself?
A He did.

Q Did you provide him an instrument to write that with?
A Yes, sir.
Q There is a signature at the bottom of that, is that correct?
A That's correct.
Q And whose signature does that appear to you to be?
A Tanis Martinez.
Q Were you present when he signed that particular form?
A I was.
Q There's also a large "X" with initials or what appear to be initials. What is that?
A That's a large "X" with the defendant's initials in each of the triangles that are formed by the "X".
Q Okay. For what reason did he put that in there?
A He did that at my direction. And that's to indicate that was the end of his statement and so that the rest of the lines would be marked so that nobody could ever come back in and add to it without it being known.
Q Okay. Is that something you do standardly when taking a written statement from defendants?

A Yes.
MR. SMITH: The State moves to introduce

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State's Exhibit No. 7, your Honor.
MR. BRASWELL: To which we'll object to. your Honor.
THE COURT: Give me your grounds.
MR. BRASWELL: Voluntariness. The police officer did not have the authority to go and do that as we've stated in the brief. We've tried it to the Court in the case and it's totally improper.
THE COURT: The objection will be overruled.
Q (By Mr. Smith) Now, Lieutenant Rizzi, there's a time noted on State's Exhibit No. 7, is that correct?
A That's correct.
Q And what time is noted on there?
A 12:45 p.m.
Q Okay. And that would be shortly after noon, is that right?
A Right.
Q When did you start -- let's just for a reference of time, when did you pick Mr. Martinez up after he delivered his car to his sister? Do you recall the approximate time?

A I don't remember exactly. We arrived in Oklahoma City about 10:45. I'd say about 11:15, 11:30, somewhere in there.
Q And approximately how long did it take you to drive

to the Robert Lester Training Center?
A Twenty minutes.
Q And do you recall approximately what time it was when you first started interviewing the defendant?
A It was 12:15 when I read the Miranda Warning to him.
Q Is that time documented on that?
A It is.
Q I'll show you what's been introduced as State's Exhibit No. 5 and ask you if the time is documented on that document?
A It says 12:15 p.m.
Q Okay. So from the time that you read him the Miranda Warning until the time that he filled out a written statement basically with the information that you've already testified to was about 30 minutes, is that correct?
A That's correct.
Q Now, during this 30 minutes from the time the

Miranda Warning was given until the written statement was made did the defendant at any time request that the interview or the interrogation should end?
A No, sir.
Q Did at any time he request the presence of an attorney?

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A No, sir.
Q Did at any time -- did he ask you during that time period to take you home?
A No, sir.
Q During that time period did you or Detective Davenport threaten the defendant in any manner?
A No, sir.
Q Did you have any threatening weapons or anything -- show him anything like that during that time?
A No, sir.
Q Now, when he was doing -- when he completed -- when he wrote out the statement was there any other conversation about documenting the statement he'd given you?
A Yes, sir. He was -- he was writing it and he was having a hard time writing it. It was like he changed his mind about writing it while he

was doing it. And he
gave it to me and asked me to write it for him.
Q Okay. What did you say?
A I told him that I'd much rather do an audio tape if
he didn't want to write it. I'd rather do an audio
tape. And again I offered him the video tape, and he,
of course, didn't want to do the video tape but agreed
to do the audio tape.
And I asked him if he just wanted to talk or if he

wanted to do a question and answer. And he thought it
would be better if I just asked him questions and he
answer them.
Q. Okay. So when he was writing -- is this after he
completed writing out the statement or had he pretty
well got to a stopping point or what when this part of
the conversation is going on?
A At that point when that conversation came up he had
written to the end of that statement, and then that's
where he stopped. When we started taking about that I
said, "Okay, just stop it there and we'll do an audio
tape." And that's when he did it.
Q Okay. And when you say an audio

tape, what type of
device and what type of tape are you talking about?
A A mini-cassette recorder.
Q Is that a recorder that you use in your day-to-day
business?
A It is.
Q Is there one checked out to you by the Clinton
Police Department?
A It is, sir.
Q Does that tape or that audio recording device, is
it something that you have used before?
A It is.
Q And the type of tape, what type of tape was it that

goes in that device?
A A micro cassette.
Q And did you use that device and the tape that when
into it to record a statement from the defendant?
A I did.
Q When you were recording the statement from the
defendant, how did you start it?
A With the date and time, who was present, And then I
re-read the Miranda Warning from the department issue
forms.
Q The one he had previously signed?
A Yes, sir.
Q Okay. And did you ask him about

the
acknowledgement about whether he said to talk to you or
not again on the tape?
A I did. I showed him the form. I asked him if he
signed it. He said, "Yes." And I said, "And you agree
to talk to us, right"? And he said, "yes." and then we
just continued on with the interview from there.
Q And the information contained on the audio tape, is
it similar to what you testified to and what's on the
written form?
A It is.
(State's Exhibit 8 marked.)
Q Detective Rizzi, I'll hand you what's been marked

for purposes of identification as State's Exhibit 8 and
ask you if you can identify that for the Court, please?
A This is the tape recording we made on January the
23rd with the defendant.
MR. SMITH: I'm going to go ahead and have the
envelop marked as well, your Honor.
(State's Exhibit No. 8A marked.)
Q Detective Rizzi, I'm going to hand you what's been
marked as State's Exhibit No. 8A and ask you to identify
that you the court, please?

A This is the envelope that I stored the audio recording of our interview of the defendant.
Q Okay. And does that bear the information concerning the tape?
A It does.
Q And I mean as far as who was involved in that?
A It has the defendant's name on it, yes.
Q Okay. And did you initial it or sign that or anything?
A No, sir.
Q Didn't you -- have you had that envelope and tape in your possession until you brought it with you to court today?
A I have.
Q Is the tape that was contained in State's 8A,

State's Exhibit 8, is it substantially in he same condition as it was when the audio portion was used on January 23rd of 1991?
A Yes.
Q Has there been any alteration or any type of retaping on that particular tape since that date?
A No retaping. There is one point on this where when I came back from the City where I

played it for my supervisor and I hit the record button and it's just a real brief -- maybe two or three seconds spot where there was pause anyway. Outside of that it's exactly the same.

Q Okay. Did you remove the protector or the plastic clips in the back to keep anyone from being able to record over that tape?

A I did.

Q So other than the notation that you made is that tape in substantially the same condition it was on January 23rd, 1991?

A It is.

MR. SMITH: I move to introduce State's Exhibit 8 and 8A.

MR. BRASWELL: Which we object, to your Honor.

THE COURT: The objection will be overruled. I don't have a note, counsel, that you offered 7. Did

you offer 7?

MR. SMITH: Yes, I did, Judge. and that would -- yes, you admitted it.

THE COURT: All right. I believe that will be correct. 7 and 6 was admitted and we'll admit 8. The objection will be overruled.

Q (By Mr. Smith) Now, at the end of the recording of this statement did you take about any physical evidence with Mr. Martinez?
A I did.
Q And this is -- have you talked to him prior to the recorded statement or did you talk about to him after the recorded statement?
A Prior to.
Q And what specifically did you talk to him about, what type of evidence?
A What he was wearing on the night of the attack. And he told me the sleeveless T-shirt and blue jeans and Guard boots. I asked him if he still had those items, and he told me that he definitely still had the boots. And he thought he still had the pants, and he didn't think he had the shirt. I asked him if he'd give those articles to us.
Q And what was his response to that?
A He said he would.

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Q Okay. And did you go back to his apartment to retrieve those items?
A I did.
Q And did you have him sign any type of consent form

to retrieve those items from his residence?
A I did.
Q And what type of item was it that you had him sign?
A It was a Consent to Search form.
Q and did you fill it out?
A I did.
Q And did you read it to Mr. Martinez?
A I did.
Q And did he sign it?
A He did.
(State's Exhibit No. 9 marked)
Q Detective Rizzi, I'll hand you what's been marked for purposes of identification as State's Exhibit No. 9 and ask you to tell the Court what that it, please?
A This is the Permission to Search form that I filled out and the defendant signed.
Q What is the date and time on the Permission to Search form?
A The date is the 23rd of January, 1992, at 2:00 p.m.
Q And whose signatures appears on that form?
A Tanis Martinez, Bryan Rizzi, and Michael Davenport.

Q And were you present when Mr. Martinez signed the form?
A I was.
Q and your signature is on the

form?
A It is.
Q and were you present when Mr Davenport signed the
form?
A yes, sir.
Q Now, at any time up to this point -- now, let me
clarify something. Did you sign this when you were back
where you did the interviews or the taping, or did you
do this at his apartment?
A We did it in the parking lot of his apartment.
Q At any point during this time did you threaten him
or in any way to get him to sign this consent to search?
A No, sir.
Q In fact, he'd already previously given you consent
verbally, is that correct?
A That's correct.
Q Was he under arrest at this time?
A Yes, sir, he was.
Q And did he still indicate that he was willing to
sign the form?
A Yes.
Q And was he willing -- in fact, what happened after

he signed the form? Well, let me back up just a minute.
Was there any threats or did you use any coercion to get
him to sign the form?

A No, sir.
Q The fact is that he was under arrest at that time?
A That's correct.
Q And did he understand -- did you tell him any other rights other than what is indicated on the form whether he should sign that form or not?
A No, sir.
MR. SMITH: I move to introduce State's Exhibit 9, your Honor.
MR. BRASWELL: Objection, your Honor.
THE COURT: Give me your grounds again, counsel, on this one.
MR. BRASWELL: Well, the voluntariness of the statement, the agreement to make this search and produce these items.
THE COURT: The objection will be overruled.
Q (By Mr. Smith) Following Mr. Martinez signing State's Exhibit No. 9, what did you do?
A I went with Mr. Martinez to his apartment, knocked on the door, his girlfriend, Regina, she pulled open the door, I followed him upstairs to his bedroom, he pointed to some black boots on the wall that were sitting

against the wall on the floor, And said, "That's it."
I said, "These," and he "Yeah."
And then he went to the closet and pulled out a
pair of jeans from a pile and gave those to me. And I
collected the jeans and boots as evidence.
Q Okay. And did you do any other searching
independent of that on your own?
A No, sir.
Q So the only items you retrieved were the items you
talked to him about retrieving prior to going to his
apartment, is that correct?
A That's correct.
Q and he assisted you in retrieving those items?
A He did.
Q And again, was he under any threat or did you --
had you threatened him with any type of weapon or
anything during this time?
A No, sir.
Q After acquiring those two items, the jeans and the
boots, what did you do with them?
A I kept them and put them in the car.
Q And did you transport them to anyplace?
A I did. We took them to the O.S.B.I laboratory in
Oklahoma City.
Q And was that done as a matter of convenience since

you were already in Oklahoma City.
A Yes, sir.
Q Now, following -- following that what did you do with Mr. Martinez?
A After we got the boots off we headed back to Clinton. On the way -- it was getting in the afternoon and none of us had eaten so I stopped at Hardees and bought lunch for the defendant and Detective Davenport.
Q And yourself?
A Yes.
Q Okay. then you all proceeded to Clinton, Oklahoma?
A yes, sir.
Q And I assume the defendant was booked into jail at that time?
A He was.
Q Detective Rizzi, at any time during the start of this statement which would have been around 12:15 in the afternoon of January 23rd until you arrived with the defendant in Clinton and booked him into jail did the defendant ever ask for an attorney?
A No, sir.
Q During this time, more specifically, during that time that you did the interrogation and he gave you the confession, the written statement,

the audio statement,
and the permission to search, did he ask for an attorney

or ask to cease the interview?
A No, sir.
Q At any time that day was he ever threatened by yourself or Detective Davenport or any other law enforcement official?
A Not that I know of.
Q Specifically, you and Mr. Davenport. Was he ever threatened?
A No. sir.
Q The time that we're talking about, do you recall exactly about what time that you arrived back in Clinton and booked him into jail, if you know?
A I think it was about 4:30.
Q So the time we're talking about that you were with the defendant was from around probably, if I recall your testimony right, around 12 O'clock, 15 till 12:00 p.m. was when you initially contacted him and made the arrangements to get his sister his car and all of that?
A It would have been 10:45 is when we got to the City. I estimate about 11:15, 11:30.
Q Okay. At any rate, when you read

him the Rights
Waiver it was 12:15?
A Yes, sir.
Q And you arrived back in Clinton about what time?
A I think it was about 4:30.

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Q Okay. So we're not talking about more than four or
five hours total, is that correct?
A That's correct.
Q The exhibits that you presented here today that
have been presented here today, are they -- have they
been in your care, custody, and control until they came
into court today?
A Yes, sir.
Q Other than at the preliminary hearing?
A Yes.
Q And did you bring them with you to court today?
A I did.
Q And are they all in substantially the same condition as they were at the time that they were executed on January 23rd or 1992?
A Yes.
MRS. SMITH: I believe that's all I have of
this witness, your Honor.
THE COURT: All right Mr. Braswell?
CROSS EXAMINATION
BY MR. BRASWELL:
Q Detective Rizzi, you are licensed

or work for the Clinton Police Department, and you have your commission for Clinton, is that correct?
A That 's correct.

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Q Okay. Do you have any employment situation with the sheriff of Custer county?
A No, sir.
Q Okay. So you're total employment and action as a police officer is for the City of Clinton, is that correct?
A That's correct.
Q You made the statement before we went into this hearing that you called ahead to Oklahoma City to talk to the defendant, is that correct?
A No, sir, that's not correct.
Q Okay. Who did you call ahead and talk to?
A He asked me if I called ahead. I did, but it was from the manager's office. I was already in Oklahoma City when I called ahead.
Q So from Clinton you didn't call and talk to anybody, is that correct?
A That's correct.
Q And you and Detective Davenport went in one of the City police vehicles that you normally drive, is that right?

A That's correct
Q Did you obtain any written permission from the City of Oklahoma City Police Department to come in and talk to the defendant to act in a police capacity?

A. No, sir
Q Did you contact the sheriff of Oklahoma County to do that?
A No, sir.
Q Okay. Did you have a court order from this Court to go forth and go into Oklahoma County to talk to the defendant?
A No, sir.
Q Okay. So the two of you went on what you might say your own idea, is that correct?
A I'm not sure I understand your question.
Q Well, you didn't ask for authority from anybody to go to Oklahoma City to make this interview? And when I say anybody, I'm talking about the ones we've already gone through.
A No, sir.
Q Okay. Now, you previously talked to Mr. Martinez and his father some three days prior to that, is that correct?
A That's correct.

Q And at the same time since the two of you talked to him he knew what you all looked like, is that correct?
A Yes, sir.
Q Okay. In fact, you spent at least an hour with him and his father at the police department in Clinton?

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A Yeah, Yes, sir.
Q Okay. the statement that was written and given to you in Clinton was written in your presence, and Martinez wrote it out himself?
A No, sir.
Q Okay. Who wrote the statement?
A In Clinton his first statement I wrote for him as he told it to me.
Q I see. That two or three page document you wrote, is that correct?
A The first statement, I believe, is two pages.
Q Two pages?
A Yes, sir. I wrote it.
Q Okay. The first one was made on January 20th, 1992, is that right?
A That's correct.
Q Okay. And you wrote in it's entirety and then you had him sign it, is that correct?
A Basically, yes.
Q Okay. Now, when you got to Oklahoma City and you

called up to the apartment from the manager's office what did you say specifically to Mr. Martinez?
A I told him that we had some more questions for him about the Blue Pig incident.
Q Okay. You did identify yourself as Detective Rizzi

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and Detective Davenport was with you, is that right?
a I don't remember if I said Detective Davenport was with me or not. But surely I identified myself. He knew who I was or I assume I did. I don't remember that specifically.
Q But there was no question that the two of you were acting in an official capacity when you went there?
A That's correct.
Q Okay. So he had no reason to think that you were acting any other way but in an official capacity?
A That's correct.
Q Okay. Now, Detective Rizzi, when he told you that he had to go and contact his sister and he called you back isn't it true that you told him that you were just going to follow him?
A Yes, it is.
A Okay. Now, after you drop the car

off isn't it
true that you -- I'm sorry, let's back up a little bit.
It might have been before or after that. Didn't you
tell Martinez that you just wanted to go some place and
have a cup of coffee with him?
A I may have.
Q Okay. I'm just -- we don't need to be might have
now. At preliminary hearing you said, yes, to that
question. So don't hesitate. did you say that we want

to go and have a cup of coffee with you and talk?
MR. SMITH: I'm going to object, your Honor.
I don't believe the answer at preliminary hearing was
yes.
THE COURT: The objection will be sustained as
to the form of the question.
MR. BRASWELL: Yes, sir.
Q (By Mr. Braswell(Okay. For right now until we pull
it up you say you might have. And that is the most
probable statement that you made, is that correct?
A That's correct.
Q Okay. Now, when he got out of his car at his
sister's house did you put him in your front seat or

back seat of your vehicle?
A He got in the back seat.
Q Okay. You told him to get in the back seat?
A We were in the front seat so -- I don't remember if I told him to get in the back or not.
Q Okay. The two of you are in the front seat and he was in the back seat?
A Yes, sir.
Q Okay. Isn't it true when you all started out you asked him where's a good place to get some coffee and he told you various places?
A No, sir. I don't think that's true at all. I

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don't remember that.
Q He never told you where you could get some coffee?
A No, sir.
Q Now, Detective Rizzi, on your way from his apartment or his sister's house, did you all pass some places where you could get coffee?
A It's a great distance. I'm sure we did.
Q Okay. But your intentions were to go directly to this place for the interview? Your intentions were to go directly to the -- you said a training center which is a part of or adjacent to the

Highway Patrol, is that correct?
A I wanted to go -- I intended to take him to Robert Lester Training, yes.
Q And that was your intent the whole time, is that correct?
A That's correct.
Q Okay. Detective, was he free to get out of the car at any time that you all had him in the car from the time he left the apartment and his sister's house or apartment over to this Robert Lester Training Center?
A Yes, sir, he was.
Q Okay. if he had asked you to stop the car would you all have stopped the car to let him out?
A Yes.

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Q Okay. Did you ask him as you went along there whether or not he wanted to get out of the car?
A No.
Q Okay. So the whole time from riding from where his sister was up there you never made any statement whatsoever above him being able to leave the presence of you and Detective Davenport?
A No, sir, I didn't.
Q Okay. Now, when you arrived at

this training
center -- so we can clarify for the record it is
adjacent to or part of the Oklahoma Highway Patrol
facility, is it not?
A The Highway Patrol does their training there. It's
a law enforcement training center, yes.
Q Okay. Now, when you first went into the lobby area
you stayed with Martinez, and Davenport went to get the
room set up, is that right? When I say stay with --
right in the lobby area the two of you stayed in the
lobby area -- the two of you stayed in the lobby area,
right?
A I don't remember.
Q Okay. If the defendant said that was true you
wouldn't have any argument with that?
MR. SMITH: Objection to what the defendant --
THE COURT: Sustained.

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Q (By Mr. Braswell) Who went back to see if the room
was ready, you or Detective Davenport?
A I don't remember.
Q Okay. Now, when you went to this room isn't it true it wasn't the lieutenant's office. It was a side
room, is that right?

A No, sir, that's not right.
Okay. Were there any windows in that room?
A I don't remember.
Q Okay. Do you remember me asking you that at
Preliminary hearing?
A Id do.
Q Okay. Do you remember what your statement was
then?
A That I didn't know.
Q Okay. Now, you described the room as having a
table in it and some books around the wall, bookshelves,
bookcase around the wall, and some chairs in there, is
that right?
A Yes, sir.
Q Okay. Now, when you all first went there you told
him to sit down, is that correct, when you first went
inside this small room?
A I'm sure I told him to have a seat.
Q Okay. I'll use exactly -- this is the seat you

told him to have a seat in and it was up against the
wall, is that right?
A Yes.
Q Okay. And you sat in a chair directly in front of
him and another chair here Davenport sat immediately to

his right from what you explained, am I correct?
A That 's correct.
Q The table was behind you, is that right?
A Yes, sir.

Q Okay. Now, during this time that you all are sitting in here, there's one door to that room, is that right?
A Yes.
Q Okay. Are you telling us today that he was free to leave from sitting there if he wanted to?
A Yes, sir, I am.
Q Okay. Detective Rizzi, you started talking to Mr. Martinez. And from your direct examination he was saying the same thing that was said previously on the 20th of January when his father was there, is that right?
A That's right.
Q Okay. Isn't it true that you told him taking your testimony that you just said today -- said the same thing that you said before. You told him no, you did.

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Didn't you tell him that you did the acts that night in August of 1991. Didn't you tell him

that?
A At some point I'm sure that I did.
Q Okay. And that some point was before he even started writing this confession or even telling you anything, is that right?
A It was definitely before he wrote the statement.
Q Okay. And it was also definitely before he changed his story as to what he had already told you on he 20th of January, 1992?
A Yes.
Q Now, isn't it true that you told him that, "Didn't you hit her?"
A I don't remember using those words, no.
Q Okay. Well, to paraphrase it, that was what you were saying, is that right? That's what you told him?
A I probably -- or I said, didn't you do the crime or do it, referring to that crime. I don't remember saying -- I asked him later, "Did you hit her," but I didn't tell him he hit her right at the beginning.
Q Okay. Didn't you tell him that "You hit her two or three times and then kicked her"? Did you ask him -- didn't you tell him that?
A No, sir, I did not.
Q Okay. Now, Detective Rizzi, you talked to him

awhile and then you had him to start writing out a statement on that day. And isn't it true that you told him to put certain information on this statement?
A Yes.
Q Okay. Isn't it also true that some of the things that you were telling him he didn't know how to spell the words, and he asked you how to spell the words,
A I don't remember that. If he asked me how to spell a word, I would have spelled it for him. I do that --
Q Okay. After you read him the Miranda and he put that "X" in the no, isn't it true that all this occurred after you had been talking to him after he had said exactly the same thing he said on the 20th, and then you said no, this is not correct. You went through with him and finally read him the Miranda Rights?
A No, sir.
Q Once he admitted it?
A No, sir. He was read the Miranda Warning when we first started before he was asked any questions.
Q Okay. When he was read the Miranda Warning, the very first thing he did was to put

no?
A correct.
Q Okay. And you had to talk to him before that no was scratched out and an "X" over yes was written, is that right?

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A Yes.
Q Okay. And during this time there was -- when he -- once he put that no on there you didn't get an attorney there for him, did you?
A No, sir.
Q Okay. You didn't proceed to, excuse me, to stop your discussion with him and not go any further?
A We didn't have a discussion about the crime at that time.
Q No, sir. When he put that no on there --
A Yes, sir.
Q -- you didn't stop and bring an attorney in for him. You already said no to that?
A That's correct.
Q Okay. when he done the same thing, put that "X" there you didn't give him permission to go and leave the room and go back to his own business anywhere did you, sir?
A First he circled no, he didn't "X" it. And no, I didn't give him permission. I

didn't tell him
specifically you can.
Q That would be fine. Did you -- once he put a
circle or "X" on that no -- let me back around another
way then. You knew that he had "X-ed" no there, is that
correct?

A I knew that he had circled no.
Q Okay. Did you tell him here's a phone. You can
call your father or call anybody at the time when he
circled or "X-ed" that no?
A Immediately after he circled the no?
Q Yes, sir.
A No, I didn't.
Q Okay. Now --
THE COURT: Why don't you pull the mic back
We can use the microphone.
Q (By Mr. Braswell) Okay. You talked to him, as
you've already stated, you then -- the scratch out of no
and then the marking of the yes occurred, is that right?
A That's correct.
Q Okay. Now, I want to make certain there's nobody
during this time period -- there was nobody in the room
except the three of you, Davenport, him, and you?
A Correct.

Q The door was closed?
A Yes.
Q Okay. Now, this room that you all were in, it was a small room, is that correct?
A It was a one-man office. I don't know how big it was.
Q Well, is it in relationship to this big table here.

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Would it be this size or two times this size or this table?
A I'd say three times.
Q Three times the size of this table?
A Maybe bigger.
Q Okay. And for the record that would be about four by eight, four by ten table? So you're looking at 12 by 24 room approximately?
A I'm probably wrong, then, because I don't think it was 24 feet.
Q Okay. So it was smaller?
A Yeah. I don't know. I guess.
THE COURT: Counsel, the Court is having trouble ascertaining the relevance of this and we're taking an awfully long time. Let's move on to something relevant to get down to -- there's some questions I want to hear in there, and let's move on.
MR. BRASWELL: Okay.

Q (By Mr. Braswell) Now, detective, in the second statement or the confession that has been introduced, was all of that, except the top part -- the top part where you filled in the pre-printed blanks below, the actual wording, is that in Martinez's handwriting or is part of it in your handwriting?
A Underneath the heading is all in the defendant's

handwriting.
Q Okay. After that was done -- only after that did you ask him to do a video or an audio, is that right?
A That's incorrect.
Q Okay. when did you ask him to do a video or an audio?
A I asked him that after we finished with our interview. Before any record was made of what he said.
Q Okay. I'm sorry. Before any record was made of what he said?
A Yeah. I wanted to record what he said. We could report it with paper, or audio tape, or video tape. And I gave him the option of the three.
Q Okay. And it was written down first?
A Correct.

Q Okay. You gave him an option of -- why did you go to the second one to do an audio?
A It was at his request
Q He requested an audio?
A Yes.
Q Okay. And that's after the statement was already written?
A Yes.
Q Okay. So there's no question that the tape was made after the written statement?

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A That' correct.
Q And there was nothing taped at all beginning at the time you first went into that room and talking to him up until after he had written that statement?
A That's correct.
Q Okay.
MR. BRASWELL: Excuse me just a minute, your Honor. We would bring the court's attention to the preliminary hearing transcript, page 161 which is the cross-examination by me of Detective Rizzi starting the question on line 19. And I would ask permission of Court for my paralegal to read starting on page 161, line 19.
MR SMITH: Objection, relevance. I'm

completely lost, Judge. i don't know where we're at. I've got the page number, but it doesn't even hold up to what we've been talking about the last 30 minutes.

If counsel is trying to get out that he said yes, we'll get something to drink I will admit that I was in error and withdraw my objection to that. But that's not the reason I objected.

THE COURT: counsel, I -- to all of you I'm saying the relevance of where we're going I can't see. And this is not a proper predicate laid for the question.

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If you have a question that you need to ask this -- if you're trying to go into a prior inconsistent statement, Counsel, you haven't done that properly. So the court's going to sustain the objection. Let's move on.

MR. BRASWELL: Your Honor, going back to my prior question to Detective Rizzi.

Q (By Mr. Braswell) I asked you about coffee. Did you ask or state to the defendant we need to -- do you have a place we can go get some

coffee where we can sit
and talk. And the statement was he didn't think so.
And we found the page 161, line 19 was the
discussion about coffee. If counsel wants to stipulate
now that the statement about going to get coffee is
correct I have no problem.
THE COURT: Counsel, this is an improper
question. You have not laid a proper predicate nor have
you asked the question properly. The objection is
sustained.
MR BRASWELL: Yes, sir.
Q (By Mr. Braswell(Detective Rizzi, when you went
over to Mr. Martinez's house or apartment and after you
all left his sister's or before that did you ask him did
he know someplace where you can go get some coffee?
A I don't think so. I don't remember that.

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Q Okay. Do you remember discussing coffee at all?
A I don't. I don't remember talking about coffee at
all with him. I may have I just don't remember it.
Q Okay. I'd like to turn to -- well, that wouldn't
be a prior inconsistent statement.

You just don't remember today what you did on December 2, 1993, at preliminary hearing.

MR. SMITH: Objection, relevance. And it's improper.

THE COURT: Sustained.

MR. BRASWELL: Okay

Q (By Mr. Braswell) Did you personally ever ask Mr. Martinez was there someplace we can go eat or have some coffee?

A I don't remember doing that, no.

Q Okay.

MR. BRASWELL: I don't have any further questions of him, your Honor.

THE COURT: Well, the Court has several that I'd like answered. Mr. Rizzi, you indicated at some point the defendant was placed under arrest. I want to know where, when, and by whom was he placed under arrest?

THE WITNESS: He was placed under arrest at the Robert Lester Training Academy by me after the

initial interview, after the statement was written, and after the audio recording was made.

THE COURT: Well, are you saying he was

arrested three times? Or are you saying he was arrested after the giving of the oral statement, that he then gave a -- he made a written statement, when he gave you an oral statement in answer to some questions that he gave you a written statement.

And then you took an audio statement as I understand. Are you saying at the end of the audio statement you told him he was under arrest?

THE WITNESS: Yes, sir.

THE COURT: Did you tell him what he was under arrest for?

THE WITNESS: Yes, sir.

THE COURT: What did you tell him?

THE WITNESS: Assault with Intent to Kill

THE COURT: And that was on January 23, 1992?

THE WITNESS: Yes, sir.

THE COURT: At the time that you and the defendant and Detective Davenport were, I guess, in the course of making what's been identified as State's Exhibit 7, I'm going to show it to you.

You indicated to me or you indicated in your

earlier testimony that you told the defendant certain things to put in his statement. What did you tell him to put in his statement?

THE WITNESS: General -- my request of him were very general. If he would -- I asked him to put in there what time he got there, what he did while he was there and to put in things that he had already told me in our interview.

For example, what he was wearing, things that were relevant to my investigation.

THE COURT: Well, I want to know every specific thing that you told him to put in that statement, State's Exhibit 7.

THE WITNESS: Well, prior to making this, prior to him writing it I again told him to tell me what time he's got there, what he did while he was there. I wanted him to include that he was having these alcohol blackouts.

I told him to tell me about the fight with Mrs. Smith, and on the statement where there's a line drawn is where I asked him to -- he stopped there and gave it to me. and I read it and I said, "Well, you didn't tell me anything about the boots. Would you tell me what you

were wearing."
And it goes on to say that he was wearing his Guard

boots. Then I asked him to tell me where it started.
THE COURT: I see a witness in the courtroom, counsel. It's Mr. Nunemaker. And that's at the place where there's a line on the statement?
THE WITNESS: Yes, sir. There's a diagonal line where --
THE COURT: Slash mark?
THE WITNESS: Yes, sir. He'd written up to there. And then he gave it to me and I read it, and that's when I asked him to put the other things that were relevant in it.
THE COURT: Specifically, you told him to put in the part about his boots?
THE WITNESS: yes, sir, I did.
THE COURT: Did you ever tell the defendant to put only those things in there which were the truth?
THE WITNESS: Not specifically relating to this statement. But I did tell him that I wanted to find out the truth at the beginning of our interview.
THE COURT: At what time that did you handcuff

the defendant?
THE WITNESS: Right after I told him he was
under arrest, I did, yes, sir.
THE COURT: Did he then remain in handcuffs, I
guess, until he got back to Clinton?

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THE WITNESS: no, sir. I took the handcuffs
off when we went back to his apartment so he wouldn't
feel uncomfortable with his girlfriend in the house.
While I was with him I took the handcuffs off while he
retrieved the boots. And then I hand cuffed him again
when we went back to the car.
THE COURT: Before you went into the apartment
to get the boots and the jeans, I guess, after you
exited the parked lot there?
THE WITNESS: Yes.
THE COURT: At that point you took the
handcuffs off of him?
THE WITNESS: Yes
THE COURT: And then went into his apartment
and he got the boots and the jeans. And then you came
out and you re-handcuffed him then?
THE WITNESS; Yes, sir.
THE COURT: All right. Based upon the Court's
questions does the State having anything further on cross-
examination --or on redirect?